

III. Claims 39-73, drawn to a method for coating comestible products with an organic acid organic incorporated edible antimicrobial film, classified in class 427, subclass 421.1.

The Examiner contends that the inventions of Groups I-III are distinct, each from the other.

In response, Applicants provisionally elect with transverse the invention of Group I, Claims 1-17. Applicants further submit that where an applicant elects claims directed to the product, and a product is subsequently found allowable, withdrawn process claims that depend from or otherwise include product claims, will be rejoined in accordance with the provisions of M.P.E.P. §821.04. Moreover, process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to the final rejection or allowance..

With respect to the Examiner's division of the subject matter of Claims 1-73 into three separate groups, Applicants respectfully transverse. Applicants respectfully request the Examiner to modify the restriction so as to place Claims 1-73 within a single group.

The present invention provides materials and methods for making and using an edible film to inhibit pathogen growth. Applicants believe the products' and mechanism of methods of this invention provide a continuity of effort. The groups of claims do not represent distinct inventions, and thus merit examination in a single application.

Even assuming *arguendo* that Groups I-III represent distinct or independent inventions, Applicants submit that to search the subject matter of the three groups

together would not be a serious burden on the Examiner. The M.P.E.P. § 803 (Eighth Edition, Rev 2, May 2004) states:

If the search and examination of an entire application can be made without serious burden, the examiner >must<\*\* examine it on the merits, even though it includes claims to distinct or independent inventions.

In the alternative, Applicants request the Examiner to combine Groups I and II into a single group relating to an organic acid incorporated edible antimicrobial film and methods for making the organic acid incorporated edible antimicrobial film. In addition, Applicants request the Examiner to combine Groups II and III into a single group relating to methods for making the organic acid incorporated edible antimicrobial film and its use. In the alternative, Applicants request that the Examiner combine Groups I and III into a single group relating to an organic acid incorporated edible antimicrobial film and methods for using the organic acid incorporated edible antimicrobial film.

Applicants submit that the subject matters of Claims 1-17 (Group I) and Claims 18-38 (Group II) merit examination in a single group. For one to properly search the subject matter of the claims of Group I, one would necessarily have to search art relating to subject matter of the claims of Group II. Specifically, both groups are part of the same class, 424 and subclass 439. Therefore, Applicants submit that a search of Group I or II would largely overlap with a search for the subject matter of Claims 1-38. Applicants request the Examiner to modify Groups I and II into one group.

Applicants also submit that the subject matter of Claims 18-38 (Group II) and Claims 39-73 (Group III) merit examination in a single group. Applicants submit that Group III is classified as 427, a subset of class 424 or Groups II, as classified by

the Examiner. Specifically, it would not be undue burden for the Patent and Trademark Office to search two groups from the same class at two different times and a search of Group II or III would largely overlap with a search for the subject matter of Claims 18-38 and 39-73. Therefore, Applicants request the Examiner to modify Groups II and III into one group.

Applicants further submit that the subject matter of Claims 1-17 (Group I) and Claims 39-73 (Group III) merit examination in a single group. Applicants submit that Group I is classified as 424 and Groups III is classified in a subset of class 424. Specifically, it would not be undue burden for the Patent and Trademark Office to search two similar groups from only two classes at two different times. Therefore, Applicants request the Examiner to modify Groups I and III into one group.


Applicants retain the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

**CONCLUSION**

Applicants respectfully request that the foregoing remarks be entered and made of record in the file history of the application. An early allowance of the application is earnestly requested.

Respectfully submitted,

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# **EXHIBIT A**